

### REMARKS

Claims 1- 15 are pending and stand rejected.

Claims 1 and 5 have been amended to more clearly define the invention. Support for the amendment is found in [0009] of the original specification. It is believed that no new matter is introduced by this amendment.

#### Claim Objections

Claims 1-4 are objected to for informalities, as the claims are confusing because they are directed to methods of making packaging, but the steps recited are to methods of packaging. Claim 1 has been amended in a manner similar to that of the allowed claims in US 6,528,135.

#### 35 U.S.C. §102(b)

Claims 5-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over US Patent Number 6,331,265 which is issued to Applicant company, and for which a terminal disclaimer is attached. The '265 reference fails to teach every element of Applicant's claims, and therefore fails to present a *prima facie* case of anticipation. Specifically, the '265 fails to teach an article in direct contact with an aqueous medium, as is found in Applicant's amended claim 5. As described in [0008] of the present application, the '265 reference "describes the gas, hydrocarbon and motor fuel barrier properties of polydimethyl ketone films. It also demonstrates that the oxygen barrier property of polydimethyl ketone is fairly insensitive to relative humidity, in contrast to that of EVOH. However, although this polymer is used for its stability in a hydrophobic medium, such as hydrocarbons and motor fuels, there is nothing to suggest its qualities in the presence of aqueous media." There is a clear difference between oxygen transport in a humid environment (taught in '245) and the transport of water or hydrophilic liquids across a barrier. While the material in the present invention and the '245 patent can be similar, the functional use of the barrier material is quite different. The '245 deals with preventing O<sub>2</sub> transport across a barrier, no matter what the humidity is, while the present invention deals with the problem of the prevention of water or hydrophilic liquid transport.

There is no teach, and no suggestion in the '245 patent about the prevention of water or hydrophilic liquid transport.

35 U.S.C. §103(a)

Claims 1-15 stand rejected under 35 U.S.C. §103(a) as being obvious over Egret (US 6,528,135). A terminal disclaimer for the present invention over the '135 reference is attached to this response. The '135 reference fails to teach or suggest all of Applicant's claim limitations and therefore fails to present a *prima facie* case of obviousness over Applicant's amended claims. Specifically, the '135 reference fails to teach or suggest a structure in direct contact with water or a hydrophilic liquid

As described above, Applicant's amended claims are to a method for preventing water or hydrophilic liquid exchange and to an article having a structure in direct contact with water or a hydrophilic liquid. The '135 reference describes similar structures for use in contact with "gases, hydrocarbons and petrol" (column 1, lines 54-55). There is no teaching or suggestion in the '135 reference of a structure in direct contact with water or a hydrophilic liquid. Nor would one in the art arrive at Applicant's claims by routine experimentation (or engineering preference) from the '135 reference, since contact with water or a hydrophilic liquid is not a result-effective variable described in the '135 reference, and therefore there is no motivation to choose or optimize the structure for this application.

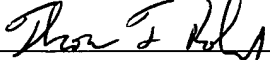
Further, the '135 reference teaches away from Applicant's amended claims, in that the structure in the examples is not in direct contact with water or a hydrophilic liquid, and such use is never taught or suggested. Measuring oxygen transport at different relative humidities is not the same, and does not teach or suggest the use of the structures as a barrier for direct contact with water or a hydrophilic liquid.

Double patenting rejection:

Claims 1-15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of US 6,528,135. A terminal disclaimer for the present invention over US 6,528,135, removing this rejection.

Since the cited reference fails to present a *prima facie* case of anticipation or obviousness over the claims as amended, Applicant believes that the reasons for rejection have been overcome, and the claims herein should be allowable to the Applicant. Accordingly, reconsideration and allowance are requested.

Respectfully submitted,

  
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Date: July 1, 2005

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